

Takings land in the wrong pocket

Written by 3K Admin

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By JOSEPH LOH

A service charge was originally imposed on customers to ensure equal and fair distribution of tips, but its purpose is only partially met today.

WHAT started off as a way of enhancing the salary of restaurant workers in the front line and the kitchen has evolved into a way to beef up the coffers or subsidise the expenses of restaurant operators.

Customers who fork out an additional 10% service charge on top of the bill assume that the amount is used to pay for the service provided and hence do not tip any further.

But in reality, only a portion of the service charge they pay goes to the serving and kitchen staff.

For example, in a random check on 21 food and beverage (F&B) outlets at a shopping centre in Petaling Jaya, Sunday Star discovered that 18 imposed a 10% service charge, but only 13 distributed it partially back to their staff in one form or another.

The F&B industry has a method of distributing the collected service charge using a so-called service points system where the more senior a staff or more important the role (for example, the chef), the more points that person is entitled to.

The service charge, more often than not, makes up for the low basic salary some of the restaurant staff are paid. The service points portion can contribute to as much as 50% of an employee's take-home salary.

G. Rajasekaran, secretary-general of the Malaysian Trades Union Congress (MTUC) says: The original intention of the service charge is good to evenly distribute tips given by customers, but it is now twisted beyond recognition.

Given the absence of any local law or regulations on the matter, the practice is unregulated, and there is nothing to stop an unscrupulous employer from collecting service charge and keeping it all for himself.

As in anything else, there is always the potential for abuse. There will be bad hats, but 90% of people doing the right thing will get lumped together with them and they will get a bad name, says Anthony, the owner of a popular upmarket food franchise.

Posh beginnings

According to Marco Battistotti, general manager of G Hotel, Penang, and Malaysian Association of Hotels Penang chapter chairman, the service charge concept was developed in Europe over 100 years ago when the first five-star hotels (like the Savoy in London) were created. This convention of imposing service charges was brought to Malaysia by the British and has become common practice here and around the world.

He says the nature of work in a hotel was more labour-intensive in those days and customers expressed their gratitude by leaving a gratuity or tip. This practice became commonplace and to simplify matters, the tip became a standard percentage and has evolved into a fixed service charge as we know it today.

Battistotti says to his knowledge, service charge has always been imposed. He cites the example of his father, a waiter in the immediate post-WW2 years in Europe, whose restaurant imposed a service charge even then.

Anthony, who started off as a waiter in the late 1970s, also recalls the imposition of service charges then.

The convention of imposing a service charge has become so widespread that the method of distributing it has found its way into local legislation.

Section 2 of the Employees Provident Fund Act 1991 defines what a service charge is, and excludes it from the definition of wages which means that contributions do not have to be made on the service charge portion.

Working the system

According to Battistotti, only those on the front line receive gratuity from customers, not the back room staff. Hotels then developed

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a method to ensure all staff received a portion, and a system of percentages was used.

In the hotel industry, he says, it is standard practice to retain 10% of the service charge for breakages and staff events.

But the majority of it (90%) goes back to the staff and is distributed using a points system. Higher-ranked and senior staff usually get more.

Theoretically, there should not be any discrepancy because everybody contributes, but this has become the normal practice, he adds.

Says Anthony: It is wrong to say that all F&B businesses keep the service charge for themselves there is a system of giving it back. How each system works varies from restaurant to restaurant.

It is a healthy system and the nitpickers should stop stirring up the issue as it will disrupt the mindset of customers, he says.

Describing how the system of service charge works in his establishment, he says: We guarantee them a respectable salary with the service charge distribution. Nothing goes to the company and in some outlets we giving out more than what we receive.

Service charge is imposed to give employees better income . The service charge ensures they get the minimum, he says.

He explains that each service point has a minimum monetary value, and if business is good, that goes up. But the minimum value is guaranteed.

Roger Hew, co-owner of a nightspot in Petaling Jaya, says that as a rule of thumb, the service points portion makes up 50% of an employee's take-home salary.

It is a norm in all F&B outlets and hotels, and people should not squabble over it. If there is a service charge, you don't have to give tips, he says, adding that the service points portion is guaranteed regardless of collection. However, over the course of the year, it tends to average itself out.

Hew does not reveal the exact allocation of the service charge but says, The balance goes into paying salaries. If we pay it all out, they will be enjoying high pay. We have to maintain the market rate for waiters.

Jeremiah*, the operations manager of an Asian food-themed chain of restaurants, reveals that the company holds a certain percentage of the collection so it can make up the balance for the months when business is slow.

The company will usually fork out more, he says, adding that the previous year (2008) was bad and the company had to top up the service points portion.

A former frontline staff himself, Jeremiah agrees that the original premise of the service charge as a gratuity is not being fulfilled. They are not getting the full benefit of it, he says.

Ganesh*, the manager of a chain of Indian cuisine restaurants, says that 60% of service charges goes back to the staff.

The balance is used to pay for breakages, and used internally such as for staff functions, he says.

When asked if covering breakage equates to covering the restaurant's costs, he says: It is not to cover costs but to cover mistakes. We can't take money from the salary, so we take it from the service charge.

A point to note is that in general, foreign workers work on a fixed salary structure and are not awarded service points.

Says Anthony: Foreign workers cost more than locals. We have to provide housing, transport, pay for their visas and levies, among others. There is a specific service charge element that belongs to foreign workers. It is structured into their fixed salary.

Additionally, the service charge portion is not income and not put down as revenue in their balance sheets, hence no tax is levied on it.

Little reward

Dr Veerinderjeet Singh, managing director of Tax and Malaysia Sdn Bhd, says that in theory, anything which is charged and the customer pays for should be taxable.

Any additional charge or collection should

be put into the accounts, and any expenses for labour should be a separate entry. At the end of the day, it is considered an expense and is deductible anyway, so it will cancel itself out, he says.

However, the original premise of a service charge is fiduciary extra on top of the salary earned. By that reasoning, the basic salary should meet minimum wage standards but this is far from the case in Malaysia. Basic salaries here are so low that one cannot possibly survive on them alone.

In establishments where a service point system is used, the service charge portion may constitute 50% of take-home pay. This begs the question whose responsibility is it to pay the worker? Is it the employer's or the customer's?

Consumer Research and Resource Centre chief executive officer Datuk Paul Selva Raj believes that the existing practice is unacceptable.

When traders charge there can only be two prices what goes to the company to cover all costs, and the other to the government in taxes. Now, they are saying this is the cost, but claiming there is another cost (for labour) that is not factored into it.

How he factors his costs for rental, ingredients, utilities or labour into his price is his business. Why should customers have to pay his costs? he asks.

He opines at the very least, service charge collected must be given in full to the employees.

There must be no discretion given to the employer on how to distribute the service charge. If they say that it is for workers, then it has to be given to them in full, if not both customers and workers are being shortchanged, says Selva Raj.

Rajasekaran believes imposing service charge only benefits the employer while the employee is hugely disadvantaged.

Because of service charge, the basic wage for hotel employees is kept very low, he says.

He adds that employees are losing out in the long term and financial security during retirement is affected, giving the example of Employees Provident Fund (EPF) contributions.

Hotel workers may only get about RM300 to RM400 in basic wages, and the rest is from service points. EPF contribution is based on the basic wage portion only, he says, highlighting the case of a hotel worker of more than 30 years who only had RM30,000 in EPF savings upon retirement.

Section 2 of the older EPF Act 1951 was amended in 1986 to exclude the service charge portion from the definition of wages, thereby reducing employers' contributions, shares Rajasekaran.

Back in the 1980s, there was a case on this service charge issue that was brought up to the Privy Council in England. It held that service charge was part of wages, and employers had to contribute on that portion, he says. The law was amended and had retrospective effect, leaving workers on the losing end, he adds.

Rajasekaran notes that the current EPF Act 1991 excludes service charge from the definition of wages, but this is in contrast to the Employees Social Security Act 1969 (Socso) and the Employment Act 1955 which regard service charge as actual income.

Now employers are pressing, so everything is in line with the EPF Act, he says.

At the end of the day, how the service charge collection is distributed is dependent on the integrity of the owner.

Abuse of the system is dependent on management. At the current moment, there is no law on it, says Hew.

Battistotti says that a hotel of any consideration will distribute the service charges appropriately.

The least that should happen is everybody does it correctly, he says.

Says Dr Veerinderjeet, It is said Malaysia does not have a tipping culture but the hospitality industry is collecting tips through this. In that sense we have a fixed tip. As a consumer, if I can pay less, I will, but we are used to it and pay the service charge.

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align="justify">◆The current practice of service charges is one-sided ◆ the people who lose out are the workers. Employers are taken care of but not the employees,◆ opines

Rajasekaran.</p><p align="justify">Source: http://th
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